Supreme Court, U. S.
FILED
NOV 13 1980
MICHAEL RODAK, JR., CLERK

80-771

No. _____

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

BURNHAM VAN SERVICE, INC.,
WITHERS VAN LINES OF MIAMI, INC.,
CENTRAL FORWARDING, INC.,
HOUSEHOLD GOODS CARRIERS' BUREAU, INC.
Petitioners,

v.

UNITER STATES OF AMERICA AND
INTERSTATE COMMERCE COMMISSION,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRYCE REA, JR.
Counsel Of Record

THOMAS M. AUCHINCLOSS, JR.
PATRICK MCELIGOT
918 - 16th Street, N.W.
Washington, D.C. 20006
(202) 785-3700
Counsel for Petitioners

Of Counsel:

REA, CROSS & AUCHINCLOSS
700 World Center Building
918 - 16th Street, N.W.
Washington, D.C. 20006

November 13, 1980

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D.C.

QUESTION PRESENTED

Did the Court of Appeals err in holding that the Interstate Commerce Commission is without power to partially suspend a rate increase, but can only "allow a tariff to take effect, suspend it, or suspend it with the proviso that some other tariff will, if filed, go into effect?"

TABLE OF CONTENTS

	PAGE
QUESTION PRESENTED	i
OPINIONS AND ORDERS BELOW	1
JURISDICTION	2
RELEVANT STATUTES AND RULES	2
STATEMENT OF THE CASE	2
REASONS FOR GRANTING THE WRIT	6
The Importance Of The Question	6
The Conflict With Decisions Of This Court	7
CONCLUSION	11

PREVIOUS PAGE WAS BLANK

TABLE OF AUTHORITIES

CASES: PAGE

Commonwealth of Pennsylvania v. *I.C.C.*, 561 F.2d 278 (D.C. Cir., 1977) 9

Ex Parte No. 261, *International Joint Rates and Through Routes,* 351 I.C.C. 490 9

Ex Parte No. MC-137, *No Suspend Zone — Motor Common Carriers,* 45 Fed. Reg., p. 6974, January 31, 1980 9

Trans Alaska Pipeline, 436 U.S. 631, 98 S. Ct. 2053, 56 L. Ed. 2d 491 (1978) 7, 8

United States v. *Chesapeake & Ohio R. Co., (Chessie),* 426 U.S. 500, 96 S. Ct. 2318, 49 L. Ed. 2d 14 (1976) 7, 8

STATUTES:

Interstate Commerce Act

49 U.S.C. §10708 2

49 U.S.C. §10762 ..... 2, 5

49 U.S.C. §10762(d) 8, 9

49 U.S.C. §11705 5

49 U.S.C. §11705(b)(1) 2

Regulations of the Interstate Commerce Commission

49 C.F.R. 1307.13 ..... 2, 3

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

No. _____

BURNHAM VAN SERVICE, INC., WITHERS VAN LINES OF MIAMI, INC., CENTRAL FORWARDING, INC., HOUSEHOLD GOODS CARRIERS' BUREAU, INC., *Petitioners,*

v.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, *Respondents.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioners respectfully pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in the above case on August 15, 1980.

OPINIONS AND ORDERS BELOW

The opinion of the Court of Appeals, not yet reported, appears at Appendix A, pp. 1a-7a, and the judgment appears at Appendix G, p. 43a. The Report of the Interstate Commerce Commission decided October 5, 1977 and served October 14, 1977 is unreported and appears at Appendix B, pp. 9a-28a. The Decision and

Order of the Interstate Commerce Commission decided April 26, 1978 and served May 2, 1978 is unreported and appears at Appendix C, pp. 30a-34a. The Decision and Order of the Interstate Commerce Commission decided December 21, 1978 and served December 27, 1978, is unreported and appears at Appendix D, pp. 35a-38a.

JURISDICTION

The judgment of the Court of Appeals was entered on August 15, 1980. This Court has jurisdiction pursuant to 28 U.S.C. §2350(a).

RELEVANT STATUTES AND RULES

The relevant sections of the Interstate Commerce Act and the Commission's rules thereunder are cited below and set forth in Appendix H, pp. 45a-50a. They are:

The Interstate Commerce Act:

49 U.S.C. §10708

49 U.S.C. §10762

49 U.S.C. §11705(b)(1)

Regulations of the Interstate Commerce Commission:

49 C.F.R. 1307.13

STATEMENT OF THE CASE

In April 1976, the Household Goods Carriers' Bureau, Inc. (Bureau), as agent for its 1,600 members which are motor common carriers of household goods, filed tariff schedules with the Interstate Commerce Commission increasing rates for the transportation of household goods throughout the United States by five percent. The increase was scheduled to become effective

May 15, 1976. On May 14, the Commission issued its order in Investigation and Suspension Docket No. M-29035. (Appendix E, pp. 39a-40a) suspending the tariff schedules in part. The first paragraph of that order sets forth the complete description of the tariff schedules and then specifically designates the suspended tariff matter as follows: "all matter therein insofar as it would increase present rates and charges by more than three (3) percent." The order further provides in the fourth paragraph:

> It is further ordered, that the operation of the said schedules be and is hereby suspended, and that the use thereof on interstate and foreign commerce be deferred to and including December 14, 1976, unless otherwise ordered by the Commission.

Following the May 14 order, the Bureau filed suspension supplements in accord with 49 C.F.R. 1307.13 which provides in part:

> Upon receipt of an order suspending a schedule in part or in its entirety, the carrier who filed such schedule shall immediately file with the Commission a consecutively numbered supplement to the schedule which shall not bear an effective date but which shall quote in full the Commission's order of suspension, followed by a statement that by reasons of the Commission's order the use and application of the suspended publication or portions thereof is deferred for the period prescribed in the suspension order. (Emphasis supplied).

In addition to the information required by the rule, the suspension supplements noted in bold print that only the increase in excess of three percent had been suspended. The supplements were sent to the 5,000 subscribers to the Bureau's tariffs together with a "Conversion Chart of Transportation Rates." The conversion chart was not

required by the Commission's rules but was provided to assist shippers in calculating the impact of the three percent increase on the former rates. This chart was not required to be filed and was not filed with the Commission. The carriers began assessing the unsuspended increased rates on May 15, 1976, the effective date of the filed tariffs.

Thereafter, the Bureau filed a petition for reconsideration of the investigation and suspension order and the Aerospace Industries Association of America, Inc. filed a request for clarification of the order. In its order served June 30, 1976, (Appendix F, pp. 41a-42a), the Commission denied the Bureau's petition, but "clarified" the investigation and suspension order. It acknowledged that the earlier order only "suspended the involved schedules to the extent they increased rates and charges by more than 3 percent," but stated that this was contrary to "Commission practice and precedent". Although the Commission's power to suspend a change in rates under 49 U.S.C. 10708 can only be exercised before the change becomes effective, the June 30 order purports to "amend" the suspension order by striking the language suspending only part of the increase and substituting language suspending the entire increase "without prejudice to the filing of schedules providing an increase in rates and charges of no more than three (3) percent to be applied in the same manner as the suspended schedules". The Commission also ordered the carriers to "cease and desist" from assessing increases in other than "tariff form" within 30 days of the date of service of its order, i.e., by July 30, 1976.

On July 9, 1976, the Bureau, pursuant to the June 30 order filed tariffs effective July 12 and 25, 1976, reimplementing the increase of three percent and cancell-

ing the suspended increase of two percent. By order served August 27, 1976, the Commission discontinued the proceeding in Investigation and Suspension Docket No. M-29035.

In September 1976, the Department of Defense filed a petition for a declaratory order as to the effective date of the increased rates. In response to that petition, the Commission instituted the proceeding under review. In a report served October 14, 1977, in Docket No. 36437 (Appendix B), the Commission found that the effective dates for the three percent increase were July 12 and 25, 1976, and that the assessment of the increased rates and charges prior to those dates constituted overcharges within the meaning of 49 U.S.C. §11705 [formerly 49 U.S.C. §304a(6)] and violated 49 U.S.C. §10762 [formerly 49 U.S.C. §317]. The Bureau and the General Services Administration filed petitions for administrative review of the report. In a decision served May 2, 1978 (Appendix C), the Commission denied the Bureau's petition but, in response to a request contained in GSA's petition, ordered the carriers to identify and notify affected shippers of the amounts in dispute and provide them with instructions and forms for filing claims for overcharges against Bureau carriers. The Bureau filed a petition for administrative review of that order and on December 27, 1978, the Commission served its order denying the Bureau's petition (Appendix D).

A petition for review was filed with the United States Court of Appeals for the Fifth Circuit which took jurisdiction under 28 U.S.C. §2342. That Court entered its Judgment (Appendix G) and Opinion (Appendix A) on August 15, 1980, affirming the Commission's decisions and orders.[1]

---

[1] In the Court of Appeals, the petitioners challenged the authority of the Commission to require the carriers to identify and notify

The Court found that the Commission's suspension order, which it characterized as "regrettably clumsy", suspended the entire five percent increase. This finding was based on the conclusion that the Commission is without power to partially suspend a rate increase. The Court found that the Commission "may allow a tariff to take effect, suspend it, or suspend it with the proviso that some other tariff will, if filed, go into effect without the ordinary thirty-day waiting period". (Appendix A, pp. 4a-5a).

REASONS FOR GRANTING THE WRIT

The Importance Of The Question

There are indeed what Rule 17.1 of this Court describes as "special and important reasons" for the grant of this petition. This is a case of first impression. To our knowledge no federal court has ever before held that the Interstate Commerce Commission has no power to partially suspend a rate increase. Moreover, the issue presented here affects motor carriers and shippers of household goods on a nationwide basis. Thousands of claims collectively amounting to millions of dollars are involved. And beyond the direct impact upon the parties affected, the Court's ruling has broad implications for all motor carriers and for shippers who use their services. In the future, although the Commission may find an immediate and urgent need for a rate increase which is less than the entire amount sought, it will not be able to permit that increase to be effective immediately.

---

affected shippers of the amounts in dispute and provide them with instructions and forms for filing overcharge claims. The Commission extended the time for compliance with this requirement and the carriers had not complied by the time petitioners' brief was filed. After their brief was filed, however, the carriers complied with the notification requirement. Since they have now complied with the requirement, it is not challenged here.

Rather, it will be limited to the narrow choices specified by the Court. It can either permit the entire increase to be effective as scheduled or suspend the entire increase "with the proviso that some other tariff will, if filed, go into effect". As the record establishes, such a refiling requirement would delay the effectivness of needed rate increases and force carriers to forego increased revenues which were determined by the Commission itself to be necessary. (R. 9, pp. 14-15). Since the Court's ruling would apply to rate decreases as well as rate increases, shippers too will be penalized by the refiling requirement in proceedings where the Commission determines that less than the entire decrease sought should be allowed.

The Conflict With Decisions Of This Court

The question presented is a federal question decided by the Court of Appeals "in a way in conflict with applicable decisions of this Court". (Rule 17.1(c)). In holding that the Commission has no authority to partially suspend a tariff, the Court cites *United States* v. *Chesapeake & Ohio R. Co.,* 426 U.S. 500, 96 S. Ct. 2318, 49 L. Ed. 2d 14 (1976) (Chessie), and *Trans Alaska Pipeline Rate Cases,* 436 U.S. 631, 98 S. Ct. 2053, 56 L. Ed. 2d 591 (1978).

In *Chessie, supra,* this Court held that the Commission could, as a condition for not suspending and investigating a tariff, require railroads to devote the additional revenues derived from the increase to pay for deferred maintenance. In *Trans Alaska, supra,* this Court held that the Commission had authority to establish maximum interim rates which it would allow to go into effect during a suspension period. After noting that it had "already recognized in Chessie that the Commission does have powers 'ancilliary' to its suspension

power which do not depend on an express statutory grant of authority", this Court stated in *Trans Alaska*:

> Thus, here as in Chessie, the Commission's refund conditions are a "legitimate, reasonable, and direct adjunct to the Commission's explicit statutory power to suspend rates pending investigation", in that they allow the Commission, in exercising its suspension power, to pursue "a more measured course" and to "offe[r] an alternative tailored far more precisely to the particular circumstances" of these cases. Ibid. Since, again, as in Chessie, the measured course adopted here is necessary to strike a proper balance between the interests of carriers and the public, we think the Interstate Commerce Act should be construed to confer on the Commission the authority to enter on this course unless language in the Act plainly requires a contrary result. 346 U.S. at 655, 656.

This Court concluded in *Trans Alaska* that nothing in the Act precludes what the Commission had done, and it affirmed the Commission's action.

We submit that the Court of Appeals has clearly misconceived and misapplied the holdings in *Chessie* and *Trans Alaska*. Those cases do not hold that the Commission's suspension power is limited as held by the Court of Appeals. To the contrary, they hold that the Commission's suspension power is extremely broad and that the Act "should be construed to confer on the Commission the authority to enter on this course unless language in the Act plainly requires a contrary result". Clearly, there is nothing in the Act which precludes the Commission's action in suspending only part of a rate increase. To the contrary, the Commission has specific authority to modify the tariff filing requirements of the Act. 49 U.S.C. §10762(d) authorizes the Commission to change "the requirements of this section if cause exists in particular instances or as they apply to special circumstances". Surely this power is broad enough to permit the Commission to partially suspend a tariff and

allow the unsuspended portion of a rate increase to go into effect as scheduled without requiring a new tariff filing. Indeed, in a recent rulemaking proceeding, Ex Parte No. MC-137, No Suspend Zone — Motor Common Carriers, 45 Fed. Reg. 6974 (January 31, 1980), the Commission has proposed to establish a zone "within which rate changes would not be noticed and published nor subject to suspension or investigation on any grounds whatsoever". In that proceeding the Commission takes the position that 49 U.S.C. §10762(d) gives it authority to dispense with the requirement that tariffs be published and filed with the Commission altogether. The power the Commission exercised here is far more limited than the power it proposes to exercise in MC-137. In this case the tariff was published and filed in the manner prescribed by the Act. It is only the limit of the Commission's suspension power which is at issue. Surely, however, if the Commission can dispense with the requirement that tariffs be filed altogether, it can dispense with the requirement that they be refiled after a partial suspension.

Moreover, it is obvious that the Commission believed that it had the power to partially suspend tariff filings. 49 C.F.R. §1307.13, set forth in Appendix H, p. 50a, clearly provides for partial suspensions such as that involved here. It begins "Upon receipt of an order suspending a schedule in part or in its entirety" and refers to "the suspended publication or portions thereof. . . ."

The Court of Appeals for the District of Columbia Circuit in *Commonwealth of Pennsylvania* v. *I.C.C.*, 561 F.2d 278 (D.C. Cir., 1977), supports our position. There the Court upheld a Commission decision in Ex Parte No. 261, *International Joint Rates and Through Rates*, 351 I.C.C. 490 (1976). While the Commission

earlier held that it had authority to suspend joint international through rates in their entirety, it changed its position and held that it would not attempt to regulate the ocean portion of such rates. Thus, the Commission required the domestic carrier's portion of the through rate to be separately stated and said that when its suspension procedures were invoked they would be "limited to the divisions accruing to the domestic carrier". In approving the Commission's decision to limit suspension to the domestic carrier's portion of a joint through rate,[2] the Court recognized that the Commission has power to partially suspend a rate. If the Commission was limited to the choices stated by the Court of Appeals in this case, it could not suspend only the domestic carrier's portion of through rate, but would have to suspend the entire rate.

---

[2] The Court defines a joint through rate as "a single charge published by one carrier and concurred in by connecting carriers as the rate that will apply on a through movement of a cargo from a point of origin on the line of one carrier to a point of destination on the line of another".

CONCLUSION

Petitioners submit that the Court erred in holding that the Interstate Commerce Commission is without power to partially suspend a rate increase. For the reasons set forth in this petition, a Writ of Certiorari should issue to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted.

BRYCE REA, JR.
Counsel of Record

THOMAS M. AUCHINCLOSS, JR.
PATRICK MCELIGOT
918 - 16th Street, N.W.
Washington, D.C. 20006
(202) 785-3700

Counsel for Petitioners

Of Counsel:

REA, CROSS & AUCHINCLOSS
700 World Center Building
918 - 16th Street, N.W.
Washington, D.C. 20006

APPENDIX A

APPENDIX A

UNITED STATES COURT OF APPEALS,
FIFTH CIRCUIT.

BURNHAM VAN SERVICE, INC., ET AL., *Petitioners,*

v.

UNITED STATES OF AMERICA AND
INTERSTATE COMMERCE COMMISSION, *Respondents.*

No. 78-2258

Aug. 15, 1980.

Petition for Review of an Order of the Interstate Commerce Commission.

Before WISDOM, RONEY and HATCHETT, *Circuit Judges.*

WISDOM, *Circuit Judge*:

Burnham Van Service Inc., et al., members of the Household Goods Carriers Bureau (Bureau) alleged in its petition for review of an order of the Interstate Commerce Commission that the Bureau complied with all the legal requirements necessary to effect a tariff increase on the transportation of household goods in the United States effective May 15, 1976. The Interstate Commerce Commission disagreed; it permitted an increase to take effect on July 12/25, but ruled that a May 15 through July 12/25 increase was unlawful. It also ordered Bureau members to notify shippers of the possibility of refunds for shipments made between May 15 and July 12/25. We agree with the Commission that the rate increase is effective from July 12/25 only, and uphold the Commission's authority to compel notice of the overcharges.

I.

The Bureau is an association of common carriers engaged in interstate and foreign transportation of household goods. It acts as a rate bureau for its members; among other tasks, it publishes tariffs and seeks tariff increases. See 49 U.S.C. §§ 10706(b), 10762(a)(1), 49 C.F.R. §§ 1307.21 — 1307.50 (1979).

In April 1976, the Bureau sought a five percent rate increase for the transportation of household goods. It filed new rate schedules with the Commission pursuant to 49 U.S.C. § 10762(3). Absent any action by the Commission, the five percent increase would have gone into effect on May 15. The Defense Department, however, protested the increase and asked the Commission to suspend and investigate the new rates. See 49 U.S.C. § 10708. The Commission issued an investigation and suspension order on May 14, 1976. It read in part:

> It is further ordered, that the operation of the said schedules be and is hereby suspended, and that the use thereof on interstate and foreign commerce by deferred to and including December 14, 1976, unless otherwise ordered by this Commission.

After listing the pertinent tariffs, however, the order also stated that it suspended "all matter therein insofar as it would increase present rates by more than three (3) percent".

The last quoted phrase created the confusion this suit was brought to resolve. The Bureau interpreted the order to mean that a three percent tariff increase had been approved, and would be effective on May 15 without the necessity of further action. The Bureau sent shippers a copy of the order, announced a three percent increase, and provided shippers with a "conversion chart" that they could use to calculate the rate at a tariff increased by three percent rather than at the published tariff of five percent. The chart was not filed with the Commission.

A shippers' association, the Aerospace Industries Association of America, Inc., challenged the Bureau's announcement of a three percent increase by asking the Commission whether the Bureau's chart met the statutory requirement that all tariffs be filed and state rates in money of the United States. See 49 U.S.C. § 10762(a)(2). The Bureau petitioned for review of the order insofar as it suspended the requested five percent increase.

On June 30, the Commission's Division 2 denied the Bureau's petition for review, and clarified its suspension order. The Commission struck the offending phrase "all matters therein insofar as it would increase present rates and charges by more than three (3) percent". Instead, it said the earlier order had suspended the "five (5) percent increase without prejudice to the filing of schedules providing an increase in rates and charges of no more than three (3) percent to be applied in the same manner as the suspended schedules". In response to the clarified order, the Bureau filed on July 9 tariffs effective July 12 and 25, 1976, with three percent increases. On August 27, the Commission ended the rate investigation and acceded to the three percent increase.

In September, the Defense Department sought a declaratory order that Bureau members had overcharged shippers by collecting the three percent increase during the May 15 through July 12/25 period before the Bureau had filed tariff schedules setting out the three percent increase. The Commission ruled that the increases charged during this period were overcharges within the meaning of 49 U.S.C. § 11705(b)(1) because there were no formal tariffs on file that clearly stated the rates actually charged, in violation of 49 U.S.C. § 10762. The conversion chart that the Bureau supplied to shippers was not lawfully filed and did not support the collection of higher rates.

The Bureau petitioned for reconsideration, and the General Services Administration requested that the Commission order Bureau members to identify overcharged shippers and notify them of the possibility of refunds for the overcharges. Division 2 denied the Bureau's petition and adopted the GSA's suggestion. It ordered Bureau members to identify and notify each shipper paying overcharges and to provide them with claim forms. The Bureau challenged the Commission's authority to issue the notification order. The full Commission, noting that the order did not force carriers to issue refunds but "simply aid[ed] shippers in the discovery of claims", found statutory authority in 49 U.S.C. § 10321, which empowers the Commission "to carry out" the Interstate Commerce Act.

II.

We need not look far to discover that no tariff increase was effective between May 15 and July 12/25. The Interstate Commerce Act sets out a series of steps a carrier must follow to effect an increase. They were not followed here.

A carrier must observe reasonable rates, 49 U.S.C. § 10702, and file its published tariff with the Commission at least thirty days prior to its effective date, 49 U.S.C. § 10762(c)(3). Carriers must also post tariffs in their offices, and transmit them to all subscribers. 49 U.S.C. § 10762(a)(2); 49 C.F.R. §§ 1307.44(h), 1307.48 those tariffs must be "clearly and explicitly stated in cents or in dollars and cents . . . ." 49 C.F.R. § 1307.28(a)(1). See 49 U.S.C. § 10762(b)(1). The Commission has authority to reject any tariff that violates the Act or Commission regulations, 49 U.S.C. § 10762(e), and to suspend a tariff for up to 7 months while investigating it, 49 U.S.C. § 10708. While a tariff is suspended, the prior tariff remains in effect. See 49 C.F.R. § 1307.13; Chicago, Milwaukee, St. Paul & Pacific R.R. Co. v. Alouette Peat Products, 9 Cir. 1957, 253 F.2d 449, 456. The Commission's regulations require that when a new tariff is suspended, a carrier notify its subscribers of the suspension, and note the tariffs that will apply during the suspension. 49 C.F.R. § 1307.34(a)(1). In addition, when the Commission rejects a tariff as unreasonable, it may point to an appropriate one. Trans Alaska Pipeline Rate Cases, 1978, 436 U.S. 631, 653 — 54, 98 S.Ct. 2053, 2065 — 66, 56 L.Ed.2d 591. This option avoids, as Justice Brennan put it,

> A pointless charade in which carriers . . . are required to submit and resubmit tariffs until one finally goes below an undisclosed maximum point of reasonable and is allowed to take effect. The administrative process, after all, is not modeled on "The Price Is Right."

436 U.S. at 653, 98 S.Ct. at 2066.

The Commission, however, has no statutory authority, in rejecting a tariff, to implement a different one. It may

allow a tariff to take effect, suspend it, or suspend it with the proviso that some other tariff will, if filed, go into effect without the ordinary thirty-day waiting period. Trans Alaska Pipeline Cases, 1978, 436 U.S. 631, 651 — 54, 98 S.Ct. 2053, 2065 — 66, 56 L.Ed.2d 591. United States v. Chesapeake & Ohio R. Co., 1977, 426 U.S. 500, 511 — 15, 96 S.Ct. 2318, 2324 — 26, 49 L.Ed.2d 14. In all cases, tariffs must be filed with the Commission before they can apply, and it is up to the carrier to file them. This result is mandated by the Act's "imperative requirements" that there always be tariffs lawfully on file that are explicit and uncomplicated. Davis v. Portland Seed Co., 1924, 264 U.S. 403, 424 — 25, 44 S.Ct. 380, 384 — 85, 68 L.Ed. 762. Justice Hughes's ancient statement is still the law: "under the Interstate Commerce Act, the rate of the carrier duly filed is the only lawful charge". Louisville & Nashville R. R. Co. v. Maxwell, 1915, 237 U.S. 94, 97, 35 S.Ct. 494, 495, 59 L.Ed. 853.

When the Commission considered the Bureau's new schedules on May 14, it had before it only two published and filed tariffs: the old one, and the proposed five percent increase. No three percent increase had been filed. The Commission could therefore approve none. That the Bureau was confused about the effect of the Commission's suspension order — and it was regrettably clumsy — cannot increase the Commission's statutory authority. The Commission cannot approve a tariff that has not been filed. Here, the original suspension order suspended the five percent increase. As the Commission made clear, by its order of June 30, it intended to say, by the language "all matter therein [is suspended] insofar as it would increase present rates by more than three (3) percent", that it would approve a three percent increase. But it did not by the suspension order approve such an increase. On July 9, the Bureau submitted a three percent increase to take effect on July 12/25, and the Commission allowed it to take effect. No three percent increase had been submitted before July 9, and none could be in force before the effective date of that tariff.

III.

We turn to the question whether the Commission had authority to order Bureau members to notify shippers of the possibility of a refund for increases charged before July 12/25. Courts have blessed the Commission's creative use of suspension orders to accomplish statutory goals. The Supreme Court has done so twice recently. In United States v. Chesapeake & Ohio Ry. Co., 1976, 426 U.S. 500, 96 S.Ct. 2318, 49 L.Ed.2d 14, the Court approved the Commission's order conditioning the termination of a rate suspension on the railroad's investing part of the rate increase in capital expenses. And in the Trans Alaska Pipeline Rate Cases, 1978, 436 U.S. 631, 98 S.Ct. 2053, 56 L.Ed.2d 591, the Court approved the Commission's order conditioning the termination of a rate suspension on the carrier's promise to refund any sums eventually found to have been unlawfully charged. The Court held that "the Commission does have powers 'ancillary' to its suspension power which do not depend on an express statutory grant of authority". 436 U.S. at 654, 98 S.Ct. at 2066. The refund conditions were permissible because there were "a necessary and 'directly related' . . . means of discharging the Commission's . . . mandate to protect the public pending a more complete determination of the reasonableness of the . . . rates". Id. at 655, 98 S.Ct. at 2067. See also Interstate Commerce Comm'n v. B & T Transp. Co., 1 Cir. 1980, 613 F.2d 1182.

The notice that the Commission prescribed in this case meets both the "directly related" and "necessary" tests. The notice requirement was directly related to the suspension order: It was an attempt to correct the tariff overcharges that resulted from the Bureau's misunderstanding of the Commission's order. And it was necessary because, as the GSA observed in its petition, the Bureau carriers were "the only group that [could] readily identify affected individuals". The order goes no further than it has to; it leaves the filing and payment of claims to shippers and carriers, in accord with the statutory scheme. We find nothing in the Act to preclude such

an order to provide notice. On the contrary, the order is consistent with the Act's purpose of providing and maintaining reasonable rates for transportation. See 49 U.S.C. §§ 10101(a)(4), (b).

The orders of the Interstate Commerce Commission are AFFIRMED and the petition for review is DISMISSED.

APPENDIX B

PREVIOUS PAGE WAS BLANK

APPENDIX B

INTERSTATE COMMERCE COMMISSION

No. 36437

DEPARTMENT OF DEFENSE
PETITION FOR DECLARATORY ORDER—
RE: ESTABLISHING EFFECTIVE DATE OF 3% INCREASE

Decided October 5, 1977

Collection of 3 percent increased charges on household goods prior to the effective date of a valid tariff found to constitute overcharges in violation of Section 217 of the Act. Proceeding discontinued.

Patrick McEligot and *Bryce Rea, Jr.*, for interested carriers.

Elton L. Brown, John M. Cleary, Dellon E. Coker, John F. Donelan, Peter Q. Nyce, Allen J. O'Brien, P.W. Pollock, M.B. Smith, and *Frank M. Wilcox* for shippers and those representing their interests.

Report Of The Commission

Service Date October 14, 1977

DIVISION 2, COMMISSIONERS MURPHY, MACFARLAND, AND CLAPP:

BY THE DIVISION:

By Petition Pursuant To The Administrative Procedure Act, 5 U.S.C. §554 (e), Filed September 7, 1976, the Secretary Of The Army (Petitioner) Seeks A Declaratory Order To Resolve An Alleged Uncertainty As To The Effective Date Of The 3 Percent General Increases In Household Goods Stemming From Investigation and Suspension Docket No. 29035, *General Increase-Household Goods Carriers' Bureau, Agent* (I & S M—29035).

A reply was filed October 1, 1976, by Household Goods Carriers' Bureau, Inc. (bureau), acknowledging the existence of a controversy and joining in the petitioner's request (although for opposite reasons).

A Notice of this request was served by the Commission November 2, 1976 and published in the Federal Register on November 5, 1976 (41 FR 48831) inviting comments upon the issues raised by the petition, including:

(1) the propriety of the schedules filed by Household Goods Carriers' Bureau, Agent, on behalf of respondent carriers and in response to the Commission's order of May 12, 1976 insofar as those schedules purport to (a) implement a 3 percent increase in rates and charges published therein, (b) supersede or cancel previously published provisions with an effective date of May 15, 1976, or earlier, or (c) authorize the application of a publication labeled "Conversion Chart of Increased Transportation Rates" in lieu of previously published supplements made the subject of the May 12 order in I. & S. Docket No. M-29035;

(2) the effect of the Commission's order of June 25, 1976, in I. & S. Docket No. M-29035, the subsequent special permission application filed by Household Goods Carriers' Bureau, Agent, and Special Permission No. 72-59-M;

(3) the applicable rates or the applicability of the increase for shipments originating between May 15, 1976, and July 12, 1976, (or July 25, 1976, as the case may be) and the possibility that the assessment of the 3 percent increase constitutes an overcharge within the meaning of Section 204a(6) of the Interstate Commerce Act (Act), violates Section 217 or other provision of the Act;

(4) the lawfulness of the higher (increased) rates and the Commission's jurisdiction to determine the lawfulness or unlawfulness of those higher rates,

should the conclusion be warranted that the increases sought to be applied were not established in the manner directed by the Act and or Tariff Circular MF-No. 3 (49 CFR 1307.0 *et seq.*);

(5) any other matters pertinent in establishing the lawful effective dates for the 3 percent increase.

To this Notice was appended an announcement of the issuance of an informal opinion of the Commission's Bureau of Traffic, Section of Rates and Informal Cases, regarding the effective date of these increases.

Comments were received on time from the petitioner, the bureau, Aerospace Industries Association of America, Inc. (Aerospace), The National Industrial Traffic League (NIT League), Reynolds Metals Company (Reynolds), American Home Products Corporation (AHP), Minnesota Mining and Manufacturing Company (3M) and the Fibreboard Corporation. These comments are summarized in Appendix 1.

The Facts

The facts in this proceeding consist of the history of I & S M-29035, which is not controverted.

In I & S M-29035, *supra*, a general increase of five percent was proposed by the Household Goods Carriers' Bureau, Agent, with an effective date of May 15, 1976. On May 14, the Commission's Suspension and Fourth Section Board suspended the pertinent schedules[1] with the phrase "All mat-

---

[1] Household Goods Carriers' Bureau, Agent,
Tariff 162-B, MF-I.C.C. No.179, supp. 14
Tariff 165-A, MF-I.C.C. No.182, supp. 14
Tariff 166-C, MF-I.C.C. No.183, supp. 11
Tariff 167-B, MF-I.C.C. No.184, supp. 12

These schedules are substantially similar, differing only in the amount of the cumulative factor to be applied to the base rates to obtain the proposed rates. The difference is due to the differing number of past increases. Thus,MF-I.C.C. 179, supp. 14, contains a factor of 115.76 percent, while the other tariffs show a factor of only 110.25 percent. In all cases, the proposed increase amounted to 5 percent.

ter therein insofar as it would increase present rates and charges by more than three (3) percent." The operative part of the suspended schedules is a "Conversion Chart of Increased Transportation Rates" applying a cumulative factor of 110.25 percent of the rate published in the initial issue of the tariff, consisting of the last effective factor of 105.0 percent increased by 5 percent. Upon suspension, the bureau issued May 20, 1976, the suspension notices, a typical example of which is reproduced as Appendix 2. This was appropriately filed with the Commission. The bureau also issued a document, reproduced in part as Appendix 3, entitled "Applicable Conversion Chart of Increased Transportation Rates to Apply in Lieu of Supplement No. 14 to Tariff No. 165-A Which Has Been Suspended in Part by the Interstate Commerce Commission." An "important notice" was added to the effect that "supplement No. 14 to Tariff No. 165-A should not be discarded as it is effective in part and the legal basis for application of the additional 3% increase as provided in this informational conversion chart." This "Conversion Chart" is "Effective : May 15, 1976", and its only significant difference from Supplement No. 14 is that it computes a 3 percent (instead of 5) increase over existing rates, 108.15 percent cumulative (instead of 110.35) increase. This document was not filed with the Commission and is unquestionably without force as a tariff for failure to comply with section 217 of the Interstate Commerce Act and the Commission's regulations, 49 CFR Part 1307, and for which no special permission was granted.

By order of June 25, 1976, Division 2, Acting as an Appellate Division, denying reconsideration and vacation of the order of suspension, issued a clarification thereof, by striking the phrases:

> All matter therein insofar as it would increase present rates and charges by more than three (3) percent,

and inserting in lieu thereof:

> without prejudice to the filing of schedules providing an increase in rates and charges of no more than three (3)

percent to be applied in the same manner as the suspended schedules.

The same order required the bureau to cease and desist from imposing the increase *in other than tariff form*. The order was served on June 30, 1976, and by Special Permission Application No. 486, of the same date, filed July 2, 1976, the bureau stated, among other things:

> It is our desire to comply with the order of Division 2 [served June 30, 1976] effective at the earliest possible time and in addition to cancel and withdraw that portion of the increase that is under suspension in I & S Docket M-29035.

Special Permission No. 77-59-M was issued on July 7, 1976 authorizing issuance of a conversion supplement, cancellation of the suspended matter in I & S Docket No. M-29035, and issuance on three days notice. Pursuant thereto, supplements were published effective July 12 and July 25, 1976,[2] illustrated in Appendix 4.

Discussion And Conclusions

We shall examine the facts in the light of the comments submitted.

The use of the phrase "All matter therein insofar as it would increase present rates and charges by more than three (3) percent" did not reduce the scope of the suspension effected by the order of May 12, 1976. That scope is the schedules noted in footnote 1. The order of suspension clearly provided:

> It is further ordered, That the operation of the said schedules be and it hereby is suspended, and that the use thereof on interstate and foreign commerce be deferred to and including December 14, 1976, unless otherwise ordered by this Commission.

---

[2] Supplement No. 1 to Tariff MF-I.C.C. No. 189, superseding MF-I.C.C. No. 179. The three other tariffs have the effective date of July 12, 1976.

The order of June 25, 1976, did not modify this provision in its clarification of the phrase quoted above. As the bureau pointed out, a similar phrase was used by Division 2 in I & S Docket No. M-29026, *Increased Rates, Bulk Commodities, P.I.T.B.*, May, 1976, proceeding discontinued June 1, 1976. In that case, Pacific Inland Tariff Bureau's Tariff 201, MF-I.C.C. 135, supplement No. 20, was suspended, suspension supplement No. 21 was filed, special permission was obtained and supplement No. 22 was published, giving effect to the 3.25 percent portion of the increase unaffected by the suspension order.

The suspension supplements (Appendix 2) could not accomplish more than give notice of the order of suspension of May 12, 1976. They did not name a single rate, or any proportional increase reducible to dollars and cents. The most obvious confirmation of that conclusion lies in the publication (but not the filing) of the "informational conversion chart" issued by the bureau (Appendix 3), which is nothing more or less than a modification of the suspended supplement, using a reduced cumulative factor (108.15 percent instead of 110.25 percent) to produce an increase of 3 percent rather than five. It is interesting to note that this "informational conversion chart" contains the same information as the supplement filed July 9, 1976, in compliance with the applicable laws and regulations.

The "informational conversion chart" is thus a tariff that fails to conform with the pertinent laws and regulations. In its comments, the bureau attempts to contradict the proclaimed intent of that document("To apply in lieu of" the suspended schedules). We are not persuaded.

The "cease and desist" provision of the June 25 order is clear. It tells the bureau not to charge a 3 percent increase in other than tariff form. It does not, as contended by the bureau, require any change in the tariffs. This is because there were no lawful tariffs in existence to change.

The bureau's application for special permission, and the subsequent publication of appropriate tariffs provided for the

first time, on July 12 and July 25, 1976, the legal justification for the increased charges. Prior thereto, the lawful charges were those computed at rates effective on May 14, 1976.

To answer *seriatim* the questions propounded in the Notice of November 2, 1976, we find:

(1)(a) that the suspension schedules filed by Household Goods Carriers' Bureau, Agent, on behalf of respondent carriers and in response to the Commission's order of May 12, 1976, were ineffective to implement a 3 percent increase in rates and charges; (b) that they do not effectively supersede previously published provisions with an effective date of May 15, 1976 or earlier; and (c) that the application of a publication labeled "Conversion Chart of Increased Transportation Rates" in lieu of previously published supplements made the subject of the May 12 order in I & S Docket No. M-29035 was unauthorized and ineffective for any purpose;

(2) that the Commission's order of June 25, 1976, in I & S Docket No. M-29035 left unmodified the suspension of the schedules under consideration; that it clarified the order with respect to the 3 percent portion of the proposal not found unreasonable and the manner in which to make it effective; and that the subsequent Special Permission Application, and Special Permission No. 72-59-M made it possible to transform the "informational conversion chart" into a proper tariff publication, which was subsequently done, effective July 12 and July 25, 1976;

(3) that the applicable rates between May 15, 1976, and July 12, 1976, (or July 25, 1976, as the case may be) were those in effect immediately prior to May 15, 1976; and that the assessment of the 3 percent increase during that period constituted an overcharge within the meaning of Section 204a(6) of the Act, and violated Section 217 of the Act;

(4) that the increases sought to be applied were not established in the manner directed by the Act nor by Tariff Circular MF-No. 3(49 CFR §1307.0 *et seq.*); reparation therefor is governed by Section 204a of the Act; and

(5) that the lawful effective dates for the 3-percent increase are July 12 and July 25,1976.

The proceeding is discontinued.

By the Commission, Division 2.

H. G. HOMME, JR.
Acting Secretary

(SEAL)

Appendix 1

1. *The Secretary of the Army.* The issues in this proceeding are confined to the questions surrounding the lawfulness of the bureau's actions subsequent to the May 14, 1976 suspension. Clearly, the bureau's intent in filing the suspension supplement (see Appendix 2) was to comply with 49 CFR §1307.34 and the order of suspension; the bureau also intended thereby to implement a 3 percent increase, rather than filing a tariff or supplement. That there was no tariff in effect at that time specifying rates increased by 3 percent is amply illustrated by the transmittal of an informational "conversion chart." Such a conversion chart is simply not a tariff. Perhaps the confusion lies in the language of 49 CFR §1307.34 (a)(1), "the *portion* of the publication that is under suspension. * * * " This cannot refer to a portion of a portion. A more realistic interpretation is that of the order of Division 2, served June 30, clarifying the order of suspension. The 3 percent increase only became lawfully effective July 12, 1976, and any increased charges collected previous to that date were not lawful charges.

2. *The NIT League.* When the Commission suspends tariffs, they remain suspended until further order. * * * Rates and charges can only be collected by carriers in accordance with the specific provisions of lawfully and legally filed tariffs. * * * There was no tariff publication on file with the Commission until July 12, 1976, (July 25, 1976, in the case of one tariff) giving effect to a 3 percent increase. The informational conversion charts do not comply with the requirements governing tariff supplements. The Commission's order of June 25, 1976 merely clarified the Commission's earlier suspension order, which was effective in suspending the tariffs as published. The order does not operate to publish or establish tariff provisions. The public is entitled to have published tariffs on file as section 217 requires.

The applicable rates between May 15, 1976, when the 5 percent increase was suspended and July 12 or July 25, 1976, when a 3 percent increase was published cannot differ from

the lawfully filed tariffs, which could not and did not reflect any increase.

3. *Aerospace Industries Association of America, Inc.* It has no desire to capitalize on an inadvertent error or the carriers nor on the omission by the Commission of boilerplate language in its initial suspension order, which language could have prevented the controversy which followed the issuance of that order. Notwithstanding the fact that equity and the intention of the tariff framers may not be accomplished, and even given the fact that a tariff provision may be in violation of a Commission order, nevertheless shippers and carriers alike are bound by and must adhere to the rates which are stated in tariffs on file with the Commission. Shippers are not charged with notice of provisions in publications other than legally filed tariffs. Shippers were made aware of the suspension of the rates by the filing of the suspension supplement. They were not, however, provided with any tariff provisions which would enable them to separate the valid portions from the proscribed portions of the suspended supplements, nor with lawfully filed and posted schedules which would permit them to construct a rate made up of three factors: the basic mileage rate, all past increases and the 3 percent portion excluded from suspension of the latest schedules. The order of suspension provided

> That neither the schedules hereby suspended nor those sought to be altered thereby shall be changed until this proceeding has been disposed of or until the period of suspension has expired, unless otherwise ordered by the Commission.

The bureau's failure to reissue the suspended schedules so as to provide for an increase of no more than 3 percent, and its decision to assess such an increase without benefit of a properly filed tariff supplement cannot be validated on the basis or the omission of the boilerplate "without prejudice" language from the initial suspension order.

4. *Reynolds Metals Company.* Since the Commission suspended the proposed schedules, the rates therein could not

be used, The rates to be applied were those in effect prior to the proposed effective date of the suspended schedules.

The Commission's order of June 25 was not a modification of the order of suspension, but a clarification to emphasize that the effect of the original order was to suspend the schedules complained of in their entirety, without prejudice to the carriers' refiling at the level initially found appropriate. The initial order of suspension, though it may contain confusing phraseology, nevertheless suspended the schedules.

5. *American Home Products Corporation.* Adopts the informal opinion of the Bureau of Traffic, Section of Rates and Informal Cases, and the position of The Secretary of the Army. The increase between May 15 and July 12, 1976, constitutes an overcharge within the meaning of section 204a(6) and violates section 217(b) of the Act.

6. *Minnesota Mining and Manufacturing Company.* Adopt the informal opinion mentioned above. If there were any minor procedural errors in issuing the orders in I & S M-29035, the issue of the legality of the rates should not automatically be resolved in the favor of the bureau.

7. *Fibreboard Corporation.* The declaratory order should state that the 3 percent increase became effective on July 12, 1976; prior thereto, there was not a proper filing with the Commission, in accordance with tariff circular rules and regulations.

8. *Household Goods Carriers' Bureau, Inc.* Referring to an order of Division 2, served April 30, 1976, in another proceeding, Investigation and Suspension Docket No. M-29026, *Increased Rates, Bulk Commodities, P.I.T.B., May, 1976,* which suspended schedules to the extent they increased existing rates "by more than 3.25 percent," the bureau contends that if the Suspension and Fourth Section Board had followed earlier precedent and suspended the increase in its entirety "without prejudice" it would have been impossible to make the increase effective May 15, 1976, as scheduled. Issue is

taken with the informal opinion of the Section of Rates and Informal Cases. The Bureau contends that it fulfilled its obligation under 49 CFR §1307.34 by filing the suspension supplements (see Appendix 2) and was not required to do anything further to implement the increases. The "Conversion Chart" was not required by the Commission's rules. Contrary to the very wording appearing in the "Conversion Chart" (see Appendix 3), the bureau contends the chart "was not intended to serve 'in lieu of previously published supplements made the subject of the May 12 order in I & S Docket No. M-29035.'" It is then contended that the June 25 clarifying order of Division 2 could have no retroactive effect; that the cease and desist ordering paragraph, notwithstanding its literal language, simply prohibited the bureau "from continuing to impose the three percent increase unless they changed their tariffs." The applicable rates between May 15, 1976, and July 12, 1976, (or July 25, 1976) were the rates "set forth in the tariffs which became effective May 15, 1976, including the unsuspended increase in rates and charges of three percent."

Appendix 2

Supplements Nos. 11, 13 and 14 Contain All Changes
Supplement No. 1 to MF-I.C.C. No. 183
Suspension Supplement

HOUSEHOLD GOODS CARRIERS' BUREAU, AGENT
Participating Carrier
under Power of Attorney MFXA 3 No. 3

ALLIED VAN LINES, INC.
Broadview, Illinois
(Docket No. MC-15735 Sub 5)

SUPPLEMENT NO. 14
to
TARIFF NO. 166-C

NAMING
LOCAL, DISTANCE AND COMMODITY RATES
ALSO EXPORT-IMPORT RATES
ON
HOUSEHOLD GOODS

BETWEEN POINTS WITHIN THE UNITED STATES
(Except will not apply to or from Alaska or Hawaii)

BETWEEN POINTS IN THE UNITED STATES
ON THE ONE HAND, AND, ON THE OTHER,
POINTS IN CANADA AND MEXICO
(Except will not apply to or from Alaska or Hawaii)
BETWEEN POINTS AND PLACES IN HAWAII

SUSPENSION NOTICE

By order of the Interstate Commerce Commission (see Page 2 herein) the effective date of increased rates and charges in

SUPPLEMENT NO. 11, MF-I.C.C. NO. 183,
ALL MATTER THEREIN INSOFAR AS IT WOULD INCREASE PRESENT RATES AND CHARGES BY MORE THAN THREE (3) PERCENT,

has been suspended to and including DECEMBER 14, 1976, and said provisions may not be used during the period of suspension. Pending restoration or cancellation of the suspended matter, the provisions of Tariff No. 166-C, MF-I.C.C. No. 183, as amended, other than those under suspension, will remain in full force and effect.

ISSUED: MAY 20, 1976

Issued under authority of Rule 10, Tariff Circular MF No. 3, and in compliance with order of the Interstate Commerce Commission in Investigation and Suspension Docket No. M-29035.

ISSUED BY
F.L. WYCHE, Executive Secretary
2425 Wilson Boulevard
Arlington, Virginia 22201

The provisions published herein, if effective, will not result in an effect on the quality of the human environment.

Appendix 3

FOR INFORMATION PURPOSES ONLY

APPLICABLE CONVERSION CHART OF INCREASED TRANSPORTATION RATES TO APPLY IN LIEU OF SUPPLEMENT NO. 14 TO TARIFF NO. 165-A WHICH HAS BEEN SUSPENDED IN PART BY THE INTERSTATE COMMERCE COMMISSION

Effective: May 15, 1976

IMPORTANT NOTICE

Supplement No. 14 to Tariff No. 165-A should not be discarded as it is effective in part and the legal basis for application of the additional 3% increase as provided in this informational conversion chart. The suspended portion of Supplement No. 14, namely, the 2% of the proposed 5% increase, will remain suspended until further notice.

(FOR INFORMATION PURPOSES ONLY)

CONVERSION CHART OF INCREASED TRANSPORTATION RATES TO APPLY IN LIEU OF SECTION XI OF SUPPLEMENT NO. 14 TO TARIFF NO. 165-A, WHICH HAS BEEN SUSPENDED BY THE INTERSTATE COMMERCE COMMISSION ONLY INSOFAR AS IT WOULD INCREASE PRESENT RATES AND CHARGES BY MORE THAN THREE (3) PERCENT.

SECTION XI

CONVERSION CHART OF INCREASED TRANSPORTATION RATES

ALL TRANSPORTATION RATES PUBLISHED IN ITEMS 78, 79 AND 80 AND SECTIONS II, III, IV, V, VI, IX AND X OF TARIFF NO. 165-A, ARE HEREBY INCREASED BY 108.15% AS PROVIDED HEREIN. THIS INCREASE WILL APPLY IN LIEU OF CONVERSION CHART SUPPLEMENT NO. 14 UNTIL FURTHER NOTICE.

NOTE: FOR CONVERSION CHART INCREASING RATES IN SECTION XII, SEE SECTION XIII HEREIN.

For Conversion Rates not provided for herein, the following formula shall be used for increasing such rates:

Multiply the published rate shown times 108.15% to obtain the increased rate to apply.

Fractions of one-half cent or more will be increased to the next whole cent.

Fractions of less than one-half cent will be dropped.

The break point weight figures for alternate charges of the published transportation rates shown in the sections enumerated above, are no longer applicable. For alternate charge provisions to apply to the increased transportation rates provided herein, see Rule 24 of tariff.

DEFINITION OF COLUMN HEADINGS USED HEREIN:

Column headings reading, "WHERE RATE NOW READS", means the published rate that is to be increased.

Column headings reading, "APPLY NEW RATE OF", means the increased rate to apply in lieu of the published rate.

CONVERSION CHART OF INCREASED TRANSPORTATION RATES

Where Rate Now Reads	Apply New Rate Of	Where Rate Now Reads	Apply New Rate Of	Where Rate Now Reads	Apply New Rate Of	Where Rate Now Reads	Apply New Rate Of	Where Rate Now Reads	Apply New Rate Of
$1.00	$1.08	$2.75	$2.97	$4.50	$4.87	$6.25	$6.76	$8.00	$ 8.65
1.05	1.14	2.80	3.03	4.55	4.92	6.30	6.81	8.05	8.71
1.10	1.19	2.85	3.08	4.60	4.97	6.35	6.87	8.10	8.76
1.15	1.24	2.90	3.14	4.65	5.03	6.40	6.92	8.15	8.81
1.20	1.30	2.95	3.19	4.70	5.08	6.45	6.98	8.20	8.87
1.25	1.35	3.00	3.24	4.75	5.14	6.50	7.03	8.25	8.92
1.30	1.41	3.05	3.30	4.80	5.19	6.55	7.08	8.30	8.98
1.35	1.46	3.10	3.35	4.85	5.25	6.60	7.14	8.35	9.03
1.40	1.51	3.15	3.41	4.90	5.30	6.65	7.19	8.40	9.08
1.45	1.57	3.20	3.45	4.95	5.35	6.70	7.25	8.45	9.14
1.50	1.62	3.25	3.51	5.00	5.41	6.75	7.30	8.50	9.19
1.55	1.68	3.30	3.57	5.05	5.46	6.80	7.35	8.55	9.25
1.60	1.73	3.35	3.62	5.10	5.52	6.85	7.41	8.60	9.30
1.65	1.78	3.40	3.68	5.15	5.57	6.90	7.46	8.65	9.35
1.70	1.81	3.46	3.73	5.20	5.62	6.95	7.52	8.70	9.41
1.75	1.89	3.50	3.79	5.25	5.68	7.00	7.57	8.75	9.46
1.80	1.95	3.55	3.84	5.30	5.73	7.05	7.62	8.80	9.52
1.85	2.00	3.60	3.89	5.35	5.79	7.10	7.68	8.85	9.57
1.90	2.05	3.65	3.95	5.40	5.84	7.15	7.73	8.90	9.63
1.95	2.11	3.70	4.00	5.45	5.89	7.20	7.79	8.95	9.68
2.00	2.16	3.75	4.06	5.50	5.95	7.25	7.84	9.00	9.73
2.05	2.22	3.80	4.11	5.55	6.00	7.30	7.89	9.05	9.79
2.10	2.27	3.85	4.16	5.60	6.06	7.35	7.95	9.10	9.84
2.15	2.33	3.90	4.22	5.65	6.11	7.40	8.00	9.15	9.90
2.20	2.38	3.95	4.27	5.70	6.16	7.45	8.06	9.20	9.95
2.25	2.43	4.00	4.33	5.75	6.22	7.50	8.11	9.25	10.00
2.30	2.49	4.05	4.38	5.80	6.27	7.55	8.17	9.30	10.06
2.35	2.54	4.10	4.43	5.85	6.33	7.60	8.22	9.35	10.11
2.40	2.60	4.15	4.49	5.90	6.38	7.65	8.27	9.40	10.17
2.45	2.65	4.20	4.54	5.95	6.43	7.70	8.33	9.45	10.22
2.50	2.70	4.25	4.60	6.00	6.49	7.75	8.38	9.50	10.27
2.55	2.76	4.30	4.65	6.05	6.54	7.80	8.44	9.55	10.33
2.60	2.81	4.35	4.70	6.10	6.60	7.85	8.49	9.60	10.38
2.65	2.87	4.40	4.76	6.15	6.65	7.90	8.54	9.65	10.44
2.70	2.92	4.45	4.81	6.20	6.71	7.95	8.60	9.70	10.49

Appendix 4

Supplements Nos. 13, 15 and 16 Contain all Changes

Supplement No. 16 to MF-I.C.C. No. 183 Cancels Supplements Nos. 11 & 14

HOUSEHOLD GOODS CARRIERS' BUREAU, AGENT
Participating Carrier under Power of Attorney MFXA3 No. 3

ALLIED VAN LINES, INC.

Broadview, Illinois
(Docket No. MC-15735 Sub 5)

SUPPLEMENT NO. 16

TO

TARIFF NO. 166-C

NAMING
LOCAL, DISTANCE AND COMMODITY RATES
ALSO EXPORT-IMPORT RATES
ON

HOUSEHOLD GOODS

BETWEEN POINTS WITHIN THE UNITED STATES
(Except will not apply to or from Alaska or Hawaii)
BETWEEN POINTS IN THE UNITED STATES ON THE ONE HAND, AND, ON THE OTHER, POINTS IN CANADA AND MEXICO
(Except will not apply to or from Alaska or Hawaii)
BETWEEN POINTS AND PLACES IN HAWAII

For reference to governing Mileage Guide, See Rule No. 9. For provision governing Rail and Water Substitution of Service, see Rule No. 41.

Distance or mileage commodity rates shown herein may be used only when no commodity rates (other than distance commodity rates) have been published to apply from and to the same points over the same route.

Form of Publication authorized; I.C.C. Permission No. 72-100-M.

The provisions published herein, if effective, will not result in an effect on the quality of the human environment.

ISSUED: JULY 9, 1976 EFFECTIVE: JULY 12, 1976
(Cancellation of suspended matter in I. & S. Docket No. M-29035 authorized; issued on 3 days' notice, I.C.C. Permission No. 77-59-M.)

ISSUED BY
F.L. WYCHE, Executive Secretary
2425 Wilson Boulevard
Arlington, Virginia 22201

SUPPLEMENT NO. 16 TO TARIFF NO. 166-C

AMEND SECTION X AS SHOWN ON PAGES 2, 3 AND 4 OF SUPPLEMENT NO. 11, AND SUBSTITUTE A NEW SECTION X AS FOLLOWS:

SECTION X

NO CHANGE IN RATES

CONVERSION CHART OF INCREASED TRANSPORTATION RATES

ALL TRANSPORTATION RATES PUBLISHED IN SECTIONS II, III, IV, V AND VI OF THIS TARIFF, AS AMENDED, OR ISSUED SUBSEQUENT TO THIS SUPPLEMENT, ARE HEREBY INCREASED AS PROVIDED FOR HEREIN, FOR THE PERIOD THIS SUPPLEMENT IS IN EFFECT.

NOTE: THIS CONVERSION CHART OF INCREASED TRANSPORTATION RATES EXPIRES WITH MAY 14, 1977

For Conversion Rates not provided for herein, the following formula shall be used for increasing such rates:

Multiply the published rate shown times 108.15% to obtain the increased rate to apply.

Fractions of one-half cent or more will be increased to the next whole cent.

Fractions of less than one-half cent will be dropped.

The break point weight figures for alternate charges of the published transportation rates shown in the sections enumerated above, are no longer applicable. For alternate charge provisions to apply to the increased transportation rates provided herein, see Rule 24 of tariff.

DEFINITION OF COLUMN HEADINGS USED HEREIN:

Column headings reading, "WHERE RATE NOW READS", means the published rate that is to be increased.

Column headings reading, "APPLY NEW RATE OF", means the increased rate to apply in lieu of the published rate.

CONVERSION CHART OF INCREASED TRANSPORTATION RATES

Where Rate Now Reads	Apply New Rate Of	Where Rate Now Reads	Apply New Rate Of	Where Rate Now Reads	Apply New Rate Of	Where Rate Now Reads	Apply New Rate Of	Where Rate Now Reads	Apply New Rate Of
$1.00	$1.08	$2.75	$2.97	$4.50	$4.87	$6.25	$6.76	$8.00	$ 8.65
1.05	1.14	2.80	3.03	4.55	4.92	6.30	6.81	8.05	8.71
1.19	1.10	2.85	3.08	4.60	4.97	6.35	6.87	8.10	8.76
1.15	1.24	2.90	3.14	4.65	5.03	6.40	6.92	8.15	8.81
1.20	1.30	2.95	3.19	4.70	5.08	6.45	6.98	8.20	8.87
1.25	1.35	3.00	3.24	4.75	5.14	6.50	7.03	8.25	8.92
1.30	1.41	3.05	3.30	4.80	5.19	6.55	7.08	8.30	8.98
1.35	1.46	3.10	3.35	4.85	5.25	6.60	7.14	8.35	9.03
1.40	1.51	3.15	3.41	4.90	5.30	6.65	7.19	8.40	9.08
1.45	1.57	3.20	3.46	4.95	5.35	6.70	7.25	8.45	9.14
1.50	1.62	3.25	3.51	5.00	5.41	6.75	7.30	8.50	9.19
1.55	1.68	3.30	3.57	5.05	5.46	6.80	7.35	8.55	9.25
1.60	1.73	3.35	3.62	5.10	5.52	6.85	7.41	8.60	9.30
1.65	1.78	3.40	3.68	5.15	5.57	6.90	7.46	8.65	9.35
1.70	1.84	3.45	3.73	5.20	5.62	6.95	7.52	8.70	9.40
1.75	1.89	3.50	3.79	5.25	5.68	7.00	7.57	8.75	9.46
1.80	1.95	3.55	3.84	5.30	5.73	7.05	7.62	8.80	9.52
1.85	2.00	3.60	3.89	5.35	5.79	7.10	7.68	8.85	9.57
1.90	2.05	3.65	3.95	5.40	5.84	7.15	7.73	8.90	9.63
1.95	2.11	3.70	4.00	5.45	5.89	7.20	7.79	8.95	9.68
2.00	2.16	3.75	4.06	5.50	5.95	7.25	7.84	9.00	9.73
2.05	2.22	3.80	4.11	5.55	6.00	7.30	7.89	9.05	9.79
2.10	2.27	3.85	4.16	5.60	6.06	7.35	7.95	9.10	9.84
2.15	2.33	3.90	4.22	5.65	6.11	7.40	8.00	9.15	9.90
2.20	2.38	3.95	4.27	5.70	6.16	7.45	8.06	9.20	9.95
2.25	2.43	4.00	4.33	5.75	6.22	7.50	8.11	9.25	10.00
2.30	2.49	4.05	4.38	5.80	6.27	7.55	8.17	9.30	10.06
2.35	2.54	4.10	4.43	5.85	6.33	7.60	8.22	9.35	10.11
2.40	2.60	4.15	4.49	5.90	6.38	7.65	8.27	9.40	10.17
2.45	2.65	4.20	4.54	5.95	6.43	7.70	8.33	9.45	10.22
2.50	2.70	4.25	4.60	6.00	6.49	7.75	8.38	9.50	10.27
2.55	2.76	4.30	4.65	6.05	6.54	7.80	8.44	9.55	10.33
2.60	2.81	4.35	4.70	6.10	6.60	7.85	8.49	9.60	10.38
2.65	2.87	4.40	4.76	6.15	6.65	7.90	8.54	9.65	10.44
2.70	2.92	4.45	4.81	6.20	6.71	7.95	8.60	9.70	10.49

APPENDIX C

APPENDIX C

INTERSTATE COMMERCE COMMISSION

Decision

Service Date May 2, 1978

No. 36437

DEPARTMENT OF DEFENSE — PETITION FOR DECLARATORY ORDER —

RE: ESTABLISHING EFFECTIVE DATE OF 3% INCREASE

In a report served October 14, 1977, Division 2 found that collection of 3 percent increased charges on household goods prior to the effective date of a valid tariff constituted overcharges in violation of Section 217 of the Interstate Commerce Act.

By petition filed November 14, 1977, Household Goods Carriers' Bureau, Inc. (HGCB), seeks administrative review of this report. Replies were filed by the Department of Defense on December 5, 1977 and by Aerospace Industries Association of America, Inc., on December 14, 1977. The petition does not show any material errors in the division's statement and evaluation of the facts, conclusions of law, or findings, and does not raise any matters of fact or law not adequately considered and properly disposed of in the division's report.

By petition filed November 14, 1977, the Administrator of General Services (GSA), seeks leave to intervene in this proceeding pursuant to Rule 70 of the Commission's General Rules of Procedure (49 CFR 1100.70), and to file a petition to "remove uncertainties arising" out of our report served October 14, 1977, finding that the lawful effective dates for the 3 percent increase filed by HGCB, contemplated in I.& S. Docket No. M-29035, were July 12 and July 25, 1976. This petition is treated as a petition for specific relief, rather than modification of the outstanding declaratory order.

A reply was filed by HGCB alleging (1) that GSA has not met the requirements of Rule 70 and (2), that the Commission has no jurisdiction to grant the substantive relief sought by GSA.

GSA substantially meets the requirements of Rule 70 and it is permitted to intervene and its tendered petition is accepted for filing.

The relief specifically sought by GSA is an order by this Commission with respect to the overcharges arising during the period from May 15, 1976, to July 12, or July 25, 1976, as applicable, making the following requirements:

1. Respondent carriers should identify each affected shipper;
2. Respondent carriers should notify each shipper of the amount of refund due on grounds of overcharge;
3. Respondent carriers, at time of notification, should give instructions for filing claims, and furnish necessary forms.

The Aerospace reply to HGCB's petition also supports these requests by GSA.

Although, under section 204a(2) of the act, we do not have jurisdiction to order motor carriers to pay overcharges, our general authority extends to discovery in aid of claims shippers may make of motor carriers pursuant to section 204a(2) of the Act. Cf. *Loss and Damage Claims*, 340 I.C.C. 515, 539-543 (1972). Under the national transportation policy, it is our responsibility to "promote safe, adequate, economical and efficient service * * * ." Section 204(a)(6) orders us to "administer, execute and enforce all provisions of [Part II]" and "to make all necessary orders in connection therewith * * * ." This includes the provision in section 217(b) that no motor carrier shall "collect or receive a greater or less or different compensation * * * than the rates, fares and charges specified in the tariffs in effect at that time * * * ." As indicated in *American Trucking Assns.* v. *United States*, 344 U.S. 298, 313 (1952), "the power under §204(a)(6) is geared to and bounded by the limits of the regulatory system of the Act which it supplements." We do not require the payment of money but merely direct the carriers to identify and notify affected shippers and provide them with the necessary instructions

tions and forms to file overcharge claims. If, after the claims are filed, the carriers refuse to return the overcharged amounts to the shippers, the shippers' only recourse is still to seek money judgments against the carriers in court pursuant to section 204a(2). Identification and notification requirements in no way impinge on the jurisdiction of the courts. These are not burdensome because the information to be furnished is in the possession of the carriers.

IT IS ORDERED:

Within 90 days from publication in the Federal Register, each motor carrier member of HGCB shall:

1. Identify each shipper who paid charges pursuant to the "conversion chart" applied in lieu of the suspended tariff supplements identified in the division's report served October 14, 1977;

2. Notify each such shipper of the difference between the amount paid, and the charges computed on the basis of tariffs in effect on May 14, 1976;

3. With this notice, provide instructions for filing claims and furnish the necessary forms.

4. This order shall be published in the Federal Register to protect the rights of other persons who might have an interest in this issue, with an invitation to intervene.

Decided April 26, 1978.

By the Commission, Division 1, Acting as an Appellate Division, Commissioners Brown, Gresham, and Christian.

H. G. HOMME, JR.
Acting Secretary

(SEAL)

INTERSTATE COMMERCE COMMISSION

No. 36437

DEPARTMENT OF DEFENSE — PETITION FOR DECLARATORY ORDER —
RE: ESTABLISHING EFFECTIVE DATE OF 3% INCREASE

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Order to Carriers Having Made Charges Other Than Specified in Tariffs in Effect at the Time.

SUMMARY: Upon petition of the Administrator of General Services (GSA) in a proceeding where it was found that collection of 3 percent increased charges on household goods prior to the effective date of a valid tariff constituted overcharges in violation of the Interstate Commerce Act the Commission issued the order reproduced below. By this Notice, the Commission wishes to protect the rights of any persons not parties to this proceeding and to give them an opportunity to be heard. Opening statements of fact and argument in opposition to the order reproduced below must be filed on or before 20 days from publication of this notice, with any replies due 20 days thereafter.

IT IS ORDERED:

Within 90 days from publication in the Federal Register, each motor carrier member of HGCB shall:

1. Identify each shipper who paid charges pursuant to the "conversion chart" applied in lieu of the suspended tariff supplements identified in the division's report served October 14, 1977;

2. Notify each such shipper of the difference between the amount paid, and the charges computed on the basis of tariffs in effect on May 14, 1976;

3. With this notice, provide instructions for filing claims and furnish the necessary forms.

ADDRESSES: Send notice of intent to participate and address to Office of Proceedings, (Room 5342), Interstate Commerce Commission, Washington, D.C., 20423.

FOR FURTHER INFORMATION CONTACT:

JANICE M. ROSENAK, DEPUTY DIRECTOR
OR
HARVEY GOBETZ, ASSISTANT DEPUTY DIRECTOR
SECTION OF RATES, OFFICE OF PROCEEDINGS
INTERSTATE COMMERCE COMMISSION
WASHINGTON, D.C. 20423 (202-275-7693)

ISSUED IN WASHINGTON, D.C., APRIL 26, 1978,

BY THE COMMISSION, DIVISION 1, ACTING AS AN APPELLATE DIVISION, COMMISSIONERS BROWN, GRESHAM, AND CHRISTIAN.

H. G. HOMME, JR.
Acting Secretary

APPENDIX D

APPENDIX D

INTERSTATE COMMERCE COMMISSION

Decision

Service Date December 27, 1978

No. 36437

DEPARTMENT OF DEFENSE — PETITION FOR DECLARATORY ORDER —
RE: ESTABLISHING EFFECTIVE DATE OF 3% INCREASE

Decided: December 21, 1978

This proceeding began with the filing of a petition for a declaratory order to resolve an uncertainty as to the effective date of a 3-percent general increase in the rates and charges governing interstate and foreign transportation of household goods. In a report dated October 5, 1977, the Commission, Division 2, found that the assessment of the 3-percent increase prior to the effective date of a valid tariff constituted an overcharge within the meaning of 49 U.S.C. 11705 (§204(a)6 of the Interstate Commerce Act (I.C.A.)), and violated 49 U.S.C. 10761 (§217 I.C.A.). Subsequently, the Household Goods Carriers' Bureau, Inc. (HGCB), sought administrative review of the October 5, 1977, report, and the Administrator of General Services Administration (GSA) sought intervention and certain specific relief.

On April 26, 1978, the Commission, Division 1, entered a decision denying the HGCB request for review and essentially granting the relief sought by GSA. The decision required each motor carrier member of the HGCB to (1) identify each shipper who paid charges pursuant to a "conversion chart" applied in lieu of certain suspended tariff supplements, (2) notify each shipper of the difference between the amount paid and the charges computed on the basis of tariffs in effect on May 14, 1976, and (3) provide each shipper with instructions and forms for filing claims. Carriers were to comply with the requirements within 90 days from publication of the decision

in the *Federal Register*. By a petition filed June 5, 1978, the HGCB appeals the decision. GSA, the Department of Defense (DOD), Reynolds Metals Company (Reynolds), and the National Industrial Traffic League (NITL) have replied to the appeal.

The HGCB contends that the Commission lacks the power to promulgate an order which in effect requires carriers to make refunds for claimed overcharges. It maintains that the requirement of "affirmative action" of notifying shippers contravenes the limits on Commission authority respecting motor carrier overcharges, and that shippers must always discover and submit claims without aid. If the Commission's advisory decision on the effective date of the increase is ultimately found in error, the HGCB argues, carriers would have been put to much trouble and expense.

In response, GSA states that without the notification requirement carriers would be unjustly enriched since affected shippers might never realize that they were overcharged. DOD points out that only the members of the bureau know the identities of and how much was paid by shipper customers. Reynolds avers that the Commission clearly did not order the refunding of overcharges, and urges that there is no requirement that shippers discover claims. NITL asserts that the assailed decision was a proper ancillary to clear statutory authority, particularly where many of the shippers are unsophisticated in the intricacies of tariffs and transportation regulation.

We affirm the finding by Division 1 that the mandate and responsibilities imposed by the national transportation policy and 49 U.S.C. 10321 (§204(a)(6) I.C.A.), 49 U.S.C. 11706 (§204a(2) I.C.A.), and 49 U.S.C. 10761 (§217 (b) I.C.A.) authorize the Commission to direct motor carriers to identify and notify shippers whom we have found were subjected to overcharges. Recently we determined that our jurisdiction and authority extend to the prescription of regulations for the expeditious processing of overcharges, duplicate payments, and overcharge claims. *Overcharge, Dup.*

Payment, or over-collection Claims, 358 I.C.C. 114(1978). Our notice requirement does not have the intention or effect of forcing carrier refunds; it simply aids shippers in the discovery of claims. Notwithstanding our lack of statutory authority to settle or adjudicate overcharge claims, we clearly have authority to prescribe, by order and by rule, procedures for their expeditious handling. See *Overcharge*, 358 I.C.C. at 117, and 49 U.S.C. 10321 (§204 (a)(6) I.C.A) of the Act.

Moreover, an important facet of this proceeding renders the notification requirements particularly appropriate: the proposed recipients of notice were shippers of household goods. The Commission has long recognized that individuals who use the services of household goods carriers are in a much more vulnerable position than commercial shippers. While shippers of other freight often use the services of motor common carriers on a daily basis, a householder typically moves relatively infrequently. As a result, the householder has little opportunity to develop an adequate knowledge of respective rights and duties, and misunderstandings between householder and carrier commonly occur. Further, the entire transaction may be charged with emotion owing to any unexpected increases in costs, personal inconvenience resulting from changes in shipping dates, and possible damage to or loss of a family's most prized possessions. *Practices of Motor Common Carriers of Household Goods*, 111 M.C.C. 427, 430 (1970). For these reasons the Commission has adopted special regulations governing the interstate transportation of household goods, regulations designed in major part to protect the household goods shipper. 49 C.F.R. Part 1056 (1977).

The notification requirements imposed in the April 26, 1978, decision were tended to aid unsophisticated household goods shippers, not to force payment from the carrier, but to permit the discovery of claims. We are concerned about the interests of individuals who must move at their own expense and in reliance on their own resources, and we believe that the notification requirements are a reasonable accomodation to that concern.

It is ordered:

The petition for administrative review is denied.

By the Commission. Chairman O'Neal, Vice Chairman Christian, Commissioners Brown, Stafford, Gresham and Clapp. Commissioner Stafford dissenting. Commissioner Brown absent and not participating.

NANCY L. WILSON
Acting Secretary

(SEAL)

COMMISSIONER STAFFORD, DISSENTING IN PART:

I AGREE WITH THE MAJORITY THAT THE COMMISSION HAS THE AUTHORITY TO ESTABLISH PROCEDURES GOVERNING THE EXPEDITIOUS HANDLING OF OVERCHARGE CLAIMS. HOWEVER, IN THIS CASE I WOULD AT LEAST WAIT FOR THE RESULT OF THE COURT ACTION BEFORE REQUIRING THE CARRIERS TO UNDERTAKE THE NOTIFICATION ACTION.

APPENDIX E

APPENDIX E

Service Date May 14, 1976

ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Suspension and Fourth Section Board, held at its office in Washington, D. C., on the 12th day of May, 1976.

Investigation And Suspension Docket No. M-29035 General Increase — Household Goods Carriers' Bureau, Agent

It appearing, That there have been filed with the Interstate Commerce Commission tariff schedules setting forth increased rates and charges, and new rules, regulations and practices affecting such rates and charges, applicable on interstate or foreign commerce, to become effective May 15, 1976, designated as follows:

Household Goods Carriers' Bureau, Agent,
TARIFF 162-B, MF-I.C.C. NO. 179,
in SUPPLEMENT NO. 14,
TARIFF 165-A, MF-I.C.C. NO. 182,
in SUPPLEMENT NO. 14,
TARIFF 166-C, MF-I.C.C. NO. 183,
in SUPPLEMENT NO. 11,
TARIFF 167-B, MF-I.C.C. NO. 184,
in SUPPLEMENT NO. 12, respectively:

All matter therein insofar as it would increase present rates and charges by more than three (3) percent;

And it further appearing, That upon consideration of the said schedules and protests thereto there is reason to believe that they would, if permitted to become effective, result in rates and charges, rules, regulations or practices which would be unjust and unreasonable in violation of the Interstate Commerce Act; and good cause appearing therefor:

It is ordered, That an investigation be, and it is hereby, instituted into and concerning the lawfulness of the rates, charges, and regulations contained in said schedules, with a

view to making such findings and orders in the premises as the facts and circumstances shall warrant. In the event the said schedules are changed, amended or reissued upon termination of the suspension period and the investigation having not been concluded, such changed, amended or reissued schedules will be included in this investigation.

It is further ordered, That the operation of the said schedules be and it hereby is suspended, and that the use thereof on interstate and foreign commerce be deferred to and including December 14, 1976, unless otherwise ordered by this Commission.

It is further ordered, That the investigation in this proceeding shall not be confined to the matters and issues hereinbefore stated as the reason for instituting this investigation, but shall include all matters and issues with respect to the lawfulness of the said schedules under the Interstate Commerce Act.

It is further ordered, That neither the schedules hereby suspended nor those sought to be altered thereby shall be changed until this proceeding has been disposed of or until the period of suspension has expired, unless otherwise ordered by the Commission.

And it is further ordered, That a copy of this order be filed with the schedules in the office of the Interstate Commerce Commission, and that copies hereof be served upon the carriers parties to the said schedules and that the said carriers be, and they are hereby, made respondents to this proceeding.

By the Commission, Suspension and Fourth Section Board, Board Members Fitzgerald, Babst, and Halvarson. Member Fitzgerald did not participate.

ROBERT L. OSWALD,
Secretary

(SEAL)

APPENDIX F

APPENDIX F

Service Date June 30, 1976

ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 2, acting as an Appellate Division, held at its office in Washington, D.C., on the 25th day of June, 1976.

Investigation And Suspension Docket No. M-29035 General Increase — Household Goods Carriers' Bureau, Agent

It appearing, That by order dated May 12, 1976, the Commission, Suspension and Fourth Section Board, entered into an investigation concerning the lawfulness of the rates, charges, and regulations stated in tariff schedules designated in that order, and suspended the operation of the schedules to and including December 14, 1976;

It further appearing, That consideration has been given to a petition filed by respondents seeking reconsideration and vacation of the order of suspension, a reply thereto (opposing the relief sought) by the Department of Defense, and a request for clarification filed by the Aerospace Industries Association of America, Inc.;

It further appearing, That sufficient reasons have not been shown for vacation of the suspension and investigation order;

It further appearing, That clarification of that order is necessary; that while that order suspended the involved schedules to the extent they increased rates and charges by more than 3 percent, Commission practice and precedent is to suspend the proposed increase in its entirety, without prejudice to refiling at the level initially found appropriate.

It further appearing, That the Interstate Commerce Act requires carriers to have effective tariffs on file which specify the exact rates to be applied; that respondents, in interpreting the May 12, 1976, order, filed supplements announcing entry

of the order of suspension and investigation but instead of filing a tariff incorporating a 3 percent increase, merely provided affected persons with an informational conversion chart; that it is therefore necessary for the tariff user to employ either an arithmetic computation or to refer to publications that have not been filed with this Commission; and that this practice is not in conformity with the Interstate Commerce Act or the Commission's tariff circular rules;

Wherefore:

It is ordered, That the petition be, and it is hereby, denied.

It is further ordered, That the phrase "All matter therein insofar as it would increase present rates and charges by more than three (3) percent" in the order of May 12, 1976, be, and it is hereby stricken; and that the first *It is ordered* paragraph therein be, and it is hereby, amended by replacing the period with a comma and inserting the following: "without prejudice to the filing of schedules providing an increase in rates and charges of no more than three (3) percent to be applied in the same manner as the suspended schedules;"

It is further ordered, That respondents cease and desist from imposing a 3-percent increase in other than tariff form;

And it is further ordered, That respondents be, and they are hereby required to comply with our order, as clarified, within 30 days, and that if respondents elect to apply an increase of no more than 3 percent, they file implementing publications and cancel the suspended schedules.

By the Commission, Division 2, acting as Appellate Division, Commissioners Hardin, O'Neal and Clapp.

ROBERT L. OSWALD
Secretary

(SEAL)

APPENDIX G

APPENDIX G

United States Court of Appeals
For the Fifth Circuit

October Term, 19

No. 78-2258

I.C.C. Docket No. 36437

BURNHAM VAN SERVICE, INC. *et al., Petitioners,*

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, *Respondents.*

Petition for Review of an Order of the Interstate Commerce Commission

Before WISDOM, RONEY and HATCHETT, *Circuit Judges.*

Judgment

This cause came on to be heard on the petition of Burnham Van Service, Inc., Et Al. for review of an order of the Interstate Commerce Commission of the United States and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the orders of the Interstate Commerce Commission in this cause be, and the same are hereby, affirmed, and the petition for review is dismissed;

It is further ordered that petitioners pay to respondents the costs on appeal, to be taxed by the Clerk of this Court.

August 15, 1980

Issued as Mandate:

September 9, 1980

APPENDIX H

PREVIOUS PAGE WAS BLANK

APPENDIX H

Relevant Statutes and Rules

Interstate Commerce Act:

49 U.S.C. § 10708

(a)(1) The Interstate Commerce Commission may begin a proceeding to determine the lawfulness of a proposed rate, classification, rule, or practice immediately, on its own initiative or on application of an interested party when —

(A) a new individual or joint rate or individual or joint classification, rule, or practice affecting a rate is filed with the Commission by a common carrier, other than a rail carrier, under this subtitle; or

(B) a new or reduced rate or rule or practice that causes a reduction of a rate is filed with the Commission by a contract carrier under this subtitle.

(2) The Commission must give reasonable notice before beginning a proceeding under this section but may act without allowing an interested carrier to file an answer or other formal pleading in response to its decision to begin the proceeding. The Commission may take whatever final action on a rate, classification, rule, or practice under this section, after a full hearing (whether completed before or after the rate, classification, rule, or practices goes into effect), as it could in a proceeding begun after a rate, classification, rule, or practice became effective.

(b) Pending final Commission action in a proceeding under subsection (a) of this section, the Commission may suspend the proposed rate, classification, rule, or practice at any time for not more than 7 months beyond the time it would otherwise go into effect by (1) delivering to each affected carrier, and (2) filing with the proposed rate, classification, rule, or practice, a statement of reasons for the suspension. If the Commission does not take final action during the suspension period, the proposed rate,

classification, rule, or practice is effective at the end of that period. However, if an increase in a rate for, or related to, transportation of property by an express, sleeping car, or pipeline carrier becomes effective under this subsection, the Commission may require the interested carrier to account for all amounts received under it and specify by whom and on whose behalf those amounts were paid. When the Commission takes final action, it may require the carrier to refund, with interest, to the persons on whose behalf those amounts were paid, the part of the increased rate found to be in violation of this subtitle.

(c) In a proceeding under this section, the burden is on the carrier proposing the changed rate, classification, rule, or practice to prove that the change is reasonable. The Commission shall give proceedings under this section preference over all other proceedings related to that type of carrier pending before it and make its decision at the earliest practical time.

49 U.S.C. § 10762

(a)(1) A carrier providing transportation or service subject to the jurisdiction of the Interstate Commerce Commission under chapter 105 of this title (except a motor common carrier) shall publish and file with the Commission tariffs containing the rates and (A) if a common carrier, classifications, rules, and practices related to those rates, and (B) if a contract carrier, rules and practices related to those rates, established under this chapter for transportation or service it may provide under this subtitle. A motor common carrier shall publish and file with the Commission tariffs containing the rates for transportation it may provide under this subtitle. The Commission may prescribe other information that motor common carriers shall include in their tariffs. A motor contract carrier that serves only one shipper and has provided continuous transportation to that shipper for at least one year may file only its minimum rates unless the Commis-

sion finds that filing of actual rates is required in the public interest.

(2) Carriers that publish tariffs under paragraph (1) of this subsection shall keep them open for public inspection. A rate contained in a tariff filed by a common carrier providing transportation or service subject to the jurisdiction of the Commission under subchapter II, III, or IV of chapter 105 shall be stated in money of the United States. A tariff filed by a motor or water contract carrier or by a freight forwarder providing transportation or service subject to the jurisdiction of the Commission under subchapter II, III, or IV of that chapter, respectively, may not become effective for 30 days after it is filed.

(b)(1) The Commission shall prescribe the form and manner of publishing, filing, and keeping tariffs open for public inspection under this section. The Commission may prescribe specific charges to be identified in a tariff published by a common carrier providing transportation or service subject to its jurisdiction under subchapter I, III, or IV of that chapter, but those tariffs must identify plainly —

(A) the places between which property and passengers will be transported;

(B) terminal, storage, and icing charges (stated separately) if a carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of that chapter;

(C) terminal charges if a common carrier providing transportation or service subject to the jurisdiction of the Commission under subchapter III or IV of that chapter;

(D) privileges given and facilities allowed; and

(E) any rules that change, affect, or determine any part of the published rate.

(2) A joint tariff filed by a carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of that chapter shall identify the carriers that are parties to it. The carriers that are parties to a joint tariff, other than the carrier filing it, must file a concurrence or acceptance of the tariff with the Commission but are not required to file a copy of the tariff. The Commission may prescribe or approve what constitutes a concurrence or acceptance.

(c)(1) When a common carrier providing transportation or service subject to the jurisdiction of the Commission (A) under subchapter I of chapter 105 of this title proposes to change a rate, or (B) under another subchapter of that chapter proposes to change a rate, classification, rule, or practice, the carrier shall publish, file, and keep open for public inspection a notice of the proposed change as required under subsections (a) and (b) of this section.

(2) When a contract carrier providing transportation subject to the jurisdiction of the Commission under subchapter II or III of chapter 105 of this title proposes to establish a new rate or to reduce a rate, directly or by changing a rule or practice related to the rate or the value of service under the rate, the carrier shall publish, file, and keep open for public inspection a notice of the new or reduced rate as required under subsections (a) and (b) of this section.

(3) A notice filed under this subsection shall plainly identify the proposed change or new or reduced rate and indicate its proposed effective date. A proposed change and a new or reduced rate may not become effective for 30 days after the notice is published, filed, and held open as required under subsections (a) and (b) of this section.

(d)(1) The Commission may reduce the 30-day period of subsections (a) and (c) of this section if cause exists. The Commission may change the other requirements of this section if cause exists in particular instances or as they apply to special circumstances.

(2) The Commission may prescribe regulations for the simplification of tariffs by carriers providing transportation subject to its jurisdiction under subchapter I of chapter 105 of this title and permit them to change rates, classifications, rules, and practices without filing complete tariffs that cover matter that is not being changed when the Commission finds that action to be consistent with the public interest. Those carriers may publish new tariffs that incorporate changes or plainly indicate the proposed changes in the tariffs then in effect and kept open for public inspection. However, the Commission shall require that all rates of rail carriers and rail ratemaking associations be incorporated in their individual tariffs by the end of the 2d year after initial publication of the rate, or by the end of the 2d year after a change in a rate becomes effective, whichever is later. The Commission may extend those periods if cause exists, but if it does, it must send a notice of the extension and a statement of the reasons for the extension to Congress. A rate not incorporated in an individual tariff as required by the Commission is void.

(e) The Commission may reject a tariff submitted to it by a common carrier under this section if that tariff violates this section or regulation of the Commission carrying out this section.

(f) The Commission may grant relief from this section to contract carriers when relief is consistent with the public interest and the transportation policy of section 10101 of this title. The Commission may begin a proceeding under this subsection on application of a contract carrier or group of contract carriers and on its own initiative for a water contract carrier or group of water contract carriers.

49 U.S.C. § 11705 (b)(1)

(b)(1) A common carrier providing transportation or service subject to the jurisdication of the Commission

under chapter 105 of this title is liable to a person for amounts charged that exceed the applicable rate for transportation or service contained in a tariff filed under subchapter IV of chapter 107 of this title.

Regulations of the Interstate Commerce Commission:

49 C.F.R. 1307.13

Upon receipt of an order suspending a schedule in part or in its entirety, the carrier who filed such schedule shall immediately file with the Commission a consecutively numbered supplement to the schedule which shall not bear an effective date but which shall quote in full the Commission's order of suspension, followed by a statement that by reasons of the Commission's order the use and application of the suspended publication or portions thereof is deferred for the period prescribed in the suspension order. Such supplement shall give specific reference by MF-ICC number or numbers to the schedule or schedules where rates, charges, rules, regulations, or practices continued in effect by the suspension order will be found. The carrier who filed the schedule which has been suspended in part or in its entirety shall also comply with such other instructions as may be furnished it with the order of suspension.

No. 80-771

SUPREME COURT, U.S.
FILED
JAN 8 1981

In the Supreme Court of the United States

OCTOBER TERM, 1980

BURNHAM VAN SERVICE, INC., ET AL.,
PETITIONERS

v.

UNITED STATES OF AMERICA AND
INTERSTATE COMMERCE COMMISSION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION

WADE H. MCCREE, JR.
Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 633-2217

RICHARD A. ALLEN
General Counsel

LAURENCE H. SCHECKER
Attorney
Interstate Commerce Commission
Washington, D.C. 20423

TABLE OF AUTHORITIES

Page

Cases:

Commonwealth of Pennsylvania v. *ICC*, 561 F. 2d 278 5

Trans Alaska Pipeline Rate Cases, 436 U.S. 631 ..... 3, 4

Trans Alaska Pipeline System, 355 I.C.C. 80, appeal denied, 557 F. 2d 775, aff'd, 436 U.S. 631 5

United States v. *Chesapeake & Ohio R.R.*, 426 U.S. 500 4

Statutes and regulation:

Interstate Commerce Act, 49 U.S.C. (Supp. III) 10101 *et seq.* 3

49 U.S.C. (Supp. III) 10704(a)(1) 4

49 U.S.C. (Supp. III) 10708 3

49 U.S.C. (Supp. III) 10762(d)(1) 5

49 C.F.R. 1307.13 ..... 3, 4

In the Supreme Court of the United States

OCTOBER TERM, 1980

No. 80-771

BURNHAM VAN SERVICE, INC., ET AL.,
PETITIONERS

v.

UNITED STATES OF AMERICA AND
INTERSTATE COMMERCE COMMISSION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION

---

1. Petitioner Household Goods Carriers' Bureau, Inc. (Bureau), as agent for its member motor common carriers of household goods, filed tariff schedules with the Interstate Commerce Commission increasing rates for the transportation of household goods nationwide by 5% (Pet. App. 1a-2a). Prior to the effective date of the rate increase, the Commission issued an order (Pet. App. 39a-40a) suspending the tariff schedules and instituting an investigation into the lawfulness of the rates, charges, and regulations in the proposed tariff schedules. The Commission order suspending the tariff schedules indicated concern with the tariff "insofar as it would increase present rates and charges by more than three (3) percent" (Pet. App. 39a).

The Bureau sent shippers a copy of the Commission's order, announced a 3% increase, and provided shippers with a "conversion chart" that they could use to calculate the rate at a tariff increased by 3% rather than at the published increase of 5%. The chart was not filed with the Commission, nor did the Bureau file with the Commission a new tariff schedule implementing a 3% rate increase. Nonetheless, carrier members of the Bureau began assessing shippers the 3% increase (Pet. App. 2a).

A shippers' association, the Aerospace Industries Association of America, Inc., challenged the Bureau's announcement of a 3% rate increase. The Bureau also petitioned the Commission for review of its suspension order (Pet. App. 2a). The Commission denied the Bureau's petition and clarified its suspension order by explaining (Pet. App. 41a) that "Commission practice and precedent is to suspend the proposed increase in its entirety, without prejudice to refiling at the [three percent] level * * *." Only then did the Bureau file tariff schedules to institute a 3% rate increase (Pet. App. 3a).

Thereafter, the Department of Defense sought from the Commission a declaratory order that Bureau members had overcharged shippers by collecting the 3% rate increase prior to the effective date of the 3% tariff schedule (Pet. App. 3a). The Commission found (Pet. App. 14a-15a) that the increased charges were overcharges because no formal tariffs had been on file clearly stating the rate charged. In a subsequent decision (Pet. App. 30a-34a), the Commission denied the Bureau's petition for reconsideration and, pursuant to a request by the General Services Administration, ordered Bureau members to identify and notify all shippers paying overcharges and to provide them with claim forms.[1]

---

[1]Petitioners have not challenged the notification order in this Court (Pet. 5-6 n.1).

The court of appeals affirmed the Commission's orders (Pet. App. 1a-7a). The court held that the Commission, when it suspends a tariff, has no statutory authority to implement a different one and that, therefore, the entire 5% increase tariff schedule had been suspended from the outset (*id.* at 4a-5a). Because the Bureau did not file a new 3% increase tariff immediately following suspension of the 5% tariff, the tariff that was in effect prior to the 5% increase tariff remained in effect until the 3% increase tariff was properly filed (*id.* at 5a).

2. This case rests largely on its own peculiar facts. The decision below is correct, it presents no conflict among the circuits or with decisions of this Court, and it does not involve a legal issue of general importance warranting this Court's review.

Petitioners' principal argument rests on an asserted need to clarify whether the Commission can partially suspend a rate increase. Under the Interstate Commerce Act, 49 U.S.C. (Supp. III) 10101 *et seq.*, however, there is no question concerning the mechanism for filing a rate increase and the effect of a suspension order. As the court of appeals found (Pet. App. 4a):

> The Interstate Commerce Act sets out a series of steps a carrier must follow to effect an increase. They were not followed here.

There is no dispute regarding the Commission's authority to suspend a rate increase, thereby leaving the prior tariff in effect. See 49 U.S.C. (Supp. III) 10708; 49 C.F.R. 1307.13. The Commission may also indicate what would be an appropriate tariff when it rejects one as unreasonable. *Trans Alaska Pipeline Rate Cases*, 436 U.S. 631, 653 (1978). The statute, regulations and case law clearly establish the procedures that must be followed in order to implement a rate increase after the Commission has suspended a proposed tariff.

Nothing in the statute allows the Commission to implement a rate other than the one proposed in the carrier's tariff by suspending the tariff "in part."[2] As the court of appeals recognized (Pet. App. 5a), a principal purpose of the Interstate Commerce Act's tariff system is to provide shippers and the public with certainty as to the applicable rates, by providing that the only legal rates are those set forth in public tariffs filed by the carrier and allowed to become effective by the Commission. That certainty would be undermined if, as petitioner contends, the Commission itself could implement some other rate simply by entering an order partially suspending a proposed tariff. Accordingly, in order for a carrier to implement a rate suggested by the Commission, it must file a tariff for that rate, which petitioners here failed to do.

Contrary to petitioners' suggestion (Pet. 7-8), neither *Trans Alaska* nor *United States* v. *Chesapeake & Ohio R.R.*, 426 U.S. 500 (1976) (*Chessie*), compels a different result. In *Chessie*, the Court approved of the Commission's "more measured course" of requiring, as a condition of not suspending and investigating a tariff, that railroads devote the additional revenues from the increases they had proposed to "delayed capital improvements" and "deferred maintenance." The railroads were required, however, to submit new tariffs imposing the condition on the increased revenues. 426 U.S. at 503, 515. In *Trans Alaska*, the Court approved a procedure whereby the Commission identified a tariff level that it would permit to go into effect in as little as one day *upon filing by the carriers* (436 U.S. at 637 & n.15, 653-654). Thus, the carriers in both *Chessie* and *Trans Alaska* were

---

[2]While the Commission may prescribe a rate, it may do so only "after a full hearing," 49 U.S.C. (Supp. III) 10704(a)(1), and not in the context of informal suspension proceedings.

Moreover, the reference in 49 C.F.R. 1307.13 to "an order suspending a schedule in part" pertains to, *e.g.*, a tariff that includes a rate for transportation between Philadelphia and New York and a rate for transportation between Philadelphia and Chicago, where only the rate between Philadelphia and Chicago is suspended.

required to file new tariffs. Similarly, the carriers in these proceedings were required to file a new, 3% increase tariff.[3]

Petitioners nonetheless contend (Pet. 6-7) that the Commission should have the authority partially to suspend a rate increase (or decrease) in order to be able to meet an immediate and urgent need for an increase (or decrease) smaller than the entire amount sought. This claim ignores established Commission procedures that allow a rate increase or decrease to go into effect in less than 30 days. 49 U.S.C. (Supp. III) 10762(d)(1). See *Trans Alaska Pipeline System*, 355 I.C.C. 80, 87, appeal denied, 557 F. 2d 775 (5th Cir. 1977), aff'd, 436 U.S. 631 (1978).

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

WADE H. MCCREE, JR.
Solicitor General

RICHARD A. ALLEN
General Counsel

LAURENCE H. SCHECKER
Attorney
Interstate Commerce Commission

JANUARY 1981

---

[3]Nor does *Commonwealth of Pennsylvania* v. *ICC*, 561 F. 2d 278 (D.C. Cir. 1977), on which petitioners also rely (Pet. 9-10), avail them. In that case, the court upheld the Commission's authority to suspend a domestic (ICC-regulated) carrier's separately stated portion of a joint international rate in which unregulated carriers (ocean vessels) also participated. Unlike the joint rate tariff in that case, the tariff filed by the Bureau in this case was an integral whole, which, therefore, could not be partially suspended.

No. 80-771

IN THE
Supreme Court of the United States
OCTOBER TERM, 1980

BURNHAM VAN SERVICE, INC.,
WITHERS VAN LINES OF MIAMI, INC.,
CENTRAL FORWARDING, INC.,
HOUSEHOLD GOODS CARRIERS' BUREAU, INC.,
Petitioners,

vs.

UNITED STATES OF AMERICA AND
INTERSTATE COMMERCE COMMISSION,
Respondents.

PETITIONERS' REPLY TO MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION

BRYCE REA, JR.
Counsel of record
THOMAS M. AUCHINCLOSS, JR.
PATRICK McELIGOT
918 - 16th Street, N.W.
Washington, D.C. 20006
(202) 785-3700
Counsel for Petitioners

Of Counsel:
REA, CROSS & AUCHINCLOSS
700 World Center Building
918 - 16th Street, N.W.
Washington, D.C. 20006

THE CASILLAS PRESS, INC.—1717 K Street, N. W.—Washington, D. C.—223-1220

TABLE OF AUTHORITIES

Cases: Page

Commonwealth of Pennsylvania v. ICC,
561 F.2d 278 (D.C. Cir. 1977) 4

Trans-Alaska Pipeline Rate Cases,
436 U.S. 631 (1978) 3, 4

United States v. Chesapeake & Ohio R.R.,
426 U.S. 500 (1976) (*Chessie*) 3, 4

Statutes and regulations:

49 C.F.R. § 1307.13 2

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

No. 80-771

BURNHAM VAN SERVICE, INC.,
WITHERS VAN LINES OF MIAMI, INC.,
CENTRAL FORWARDING, INC.,
HOUSEHOLD GOODS CARRIERS' BUREAU, INC.,
Petitioners,

v.

UNITED STATES OF AMERICA AND
INTERSTATE COMMERCE COMMISSION,
Respondents.

PETITIONERS' REPLY TO MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION

This brief is submitted in reply to the memorandum of respondents United States of America and Interstate Commerce Commission in opposition to the petition for writ of certiorari. This reply brief responds to the respondents' argument that the Commission cannot partially suspend a proposed tariff.

Respondents cite no authority for the proposition that the Commission cannot "implement a rate other than the one proposed in the carrier's tariff by suspending the tariff 'in part.' " They assert, however, that "a principal purpose

of the Interstate Commerce Act's Tariff system is to provide shippers and the public with certainty as to the applicable rates" and that such certainty would be "undermined" if the Commission could implement a rate other than the one sought by the carriers by partially suspending a proposed tariff (Memorandum, p. 4). This assertion is unfounded, as the facts of this case establish.

In the proceedings under review, the carriers filed tariff schedules with the Commission increasing rates and charges by five percent. The Commission suspended only so much of the tariff schedules as "would increase present rates and charges by more than three (3) percent." Following this order, the carriers immediately filed suspension supplements, as required by 49 C.F.R. § 1307.13, noting in bold print that only the rates and charges in excess of three percent had been suspended.[1]

Accordingly, the shippers and the public were made aware of the Commission's action in authorizing the three percent increase as soon as they would have been had the carriers filed the suspension supplements *and* new tariffs, as respondents claim they should have done. Clearly, refiling would have accomplished nothing except to delay implementation of the increase for the statutory notice period or for such lesser period as might have been authorized by the Commission. The imposition of a refiling requirement would thus cause more uncertainty as to the level of the applicable rates than the procedure used by the Commission here in suspending the rates in part and

[1]Contrary to respondents' suggestion in footnote 2, p. 4 of their Memorandum, 49 C.F.R. § 1307.13 clearly applies to partial suspensions such as that involved here and not only to partial suspensions of multiple point tariffs, where only the rates between some of the points are suspended. The rule applies to any "order suspending a schedule in part." (See Petition, p. 3).

permitting the unsuspended portion to take effect as scheduled.

Further, there is no merit to respondents' suggestion in footnote 2 at page 4 of the Memorandum that the Commission may not partially suspend a proposed tariff because it may "prescribe" a rate "only 'after a full hearing' ". The quoted language applies to rail carriers rather than motor carriers but, in any event, the Commission did not "prescribe" rates here any more than it did in *Trans-Alaska Pipeline Rate Cases,* 436 U.S. 631 (1978). There this Court rejected the argument that the Commission had set rates without the required hearing by identifying the rates it would allow to go into effect during the suspension period. Here, as in *Trans-Alaska,* the carriers were free to reject the increase allowed by the Commission and pursue their other remedies under the Act, but they chose to accept it. This does not mean that the Commission "prescribed" the rates.

Respondents state that "neither *Trans-Alaska* nor *United States v. Chesapeake & Ohio R.R.,* 426 U.S. 500 (1976) *(Chessie)* compels a different result." As we have shown, however, the Court of Appeals misconceived and misapplied the holdings in those cases. They do not hold that the Commission's suspension power is *limited* as held by the Court of Appeals. Rather, they hold that the Commission's suspension power is extremely broad and that the Act "should be construed to confer on the Commission the authority to enter on this course unless language in the Act plainly requires a contrary result." *Trans-Alaska Pipeline Rate Cases, supra,* 436 U.S. at 656. Since there is no language in the Act that precludes Commission action in suspending only part of a reate increase,[2] the *Trans-*

[2]Indeed, as shown in our Petition, the Commission has specific authority to modify the tariff filing requirements of the Act. (See Petition, p. 8).

Alaska and *Chessie* decisions do compel a different result from that reached by the Court of Appeals.

Finally, in footnote 3 at page 5 of their Memorandum, respondents attempt to distinguish *Commonwealth of Pennsylvania v. I.C.C.*, 561 F.2d 278 (D.C. Cir., 1977), on the basis that the tariff involved there was composed of two parts while the tariff involved here "was an integral whole, which, therefore, could not be partially suspended." This is a distinction without a difference. If, as the respondents assert, the Commission is without *power* to partially suspend a tariff, it cannot make any difference whether the rates in the tariff are "separately stated" or not. Clearly the Court in *Commonwealth of Pennsylvania* recognized that the Commission does have power to partially suspend tariffs. Thus, that decision supports our position here.

Wherefore, petitioners respectfully request that a Writ of Certiorari be issued in this case.

Respectfully submitted,

BRYCE REA, JR.
THOMAS M. AUCHINCLOSS, JR.
PATRICK McELIGOT
918 - 16th Street, N.W.
Washington, D.C. 20006
(202) 785-3700

Counsel for Petitioners

Of Counsel:

REA, CROSS & AUCHINCLOSS
700 World Center Building
918 - 16th Street, N.W.
Washington, D.C. 20006

January 14, 1981